

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,	CASE NO. 13CR3240 WQH
Plaintiff,	ORDER
vs.	
EVAN LEWIS MYERS,	
Defendant.	

HAYES, Judge:

The matter before the Court is the order to show cause why Defendant's bond (ECF No. 10) should not be revoked.

On August 6, 2013, the United States Magistrate Judge issued an arrest warrant charging the Defendant with receipt and possession of images of minors engaged in sexually explicit conduct in violation of 18 U.S.C. § 2252(a)(2) and (4).

On August 8, 2013, Defendant was arrested pursuant to the arrest warrant.

On August 9, 2013, Defendant appeared before the Magistrate Judge for an initial appearance. Defendant was appointed counsel and bond was set at a \$30,000 personal appearance bond secured by the signatures of Defendant and one surety with a ten percent cash deposit.

On August 15, 2013, the personal appearance bond was filed and Defendant was released subject to conditions of pretrial release.

1 On September 3, 2013, Defendant was charged in an Information with possession
2 of matters containing images of minors engaged in sexually explicit conduct in violation
3 of 18 U.S.C. § 2252(a)(4).

4 On October 8, 2013, Defendant entered a plea of guilty to the charge of
5 possession of matters containing images of minors engaged in sexually explicit conduct
6 in violation of 18 U.S.C. § 2252(a)(4) pursuant to a plea agreement. A presentence
7 report was ordered and a sentencing date was set.

8 On November 22, 2013, a “Petition for Warrant for Defendant on Pretrial
9 Release” was filed by Pretrial Services on the grounds that there has been a change of
10 circumstances since the time bail was set. Based upon Defendant’s suspension from his
11 current outpatient psychotherapy and the recommendation that Defendant undergo a
12 psychological evaluation, Pretrial Services believed that Defendant presented a danger
13 to the community. The Court ordered a no bail bench warrant issue for Defendant’s
14 arrest.

15 On November 25, 2013, Defendant was arrested pursuant to the no bail bench
16 warrant. Defendant was arraigned before the Magistrate Judge and a bond revocation
17 hearing was set before the district court.

18 On December 2, 2013, this Court held a bond revocation hearing.

19 ANALYSIS

20 Defendant requests that the Court release him subject to the same conditions of
21 pretrial release imposed upon his initial arrest. Defendant asserts that he poses no
22 danger to another person or to the community because he assured the second therapist
23 that he would never act on his fantasies. Defendant contends that he has complied with
24 the conditions of pretrial release. The Government requests that the Defendant’s bail
25 be revoked on the grounds that Defendant has not show by clear and convincing
26 evidence that his release will not pose a danger to any other person or to the community.

1 18 U.S.C. § 3143(a) provides:

2 Release or detention pending sentence.--(1) Except as provided in
3 paragraph (2), the judicial officer shall order that a person who has been
4 found guilty of an offense and who is awaiting imposition or execution of
5 sentence, other than a person for whom the applicable guideline
6 promulgated pursuant to 28 U.S.C. 994 does not recommend a term of
7 imprisonment, be detained, unless the judicial officer finds by clear and
convincing evidence that the person is not likely to flee or pose a danger
to the safety of any other person or the community if released under
section 3142(b) or (c). If the judicial officer makes such a finding, such
judicial officer shall order the release of the person in accordance with
section 3142(b) or (c).

8 18 U.S.C. §3143(a)(1). “The burden of establishing that the defendant will not flee or
9 pose a danger to any other person or to the community rests with the defendant.” Fed.
10 R. Crim. P. 46 (c).

11 In this case, Defendant entered a plea of guilty to a serious charge of possession
12 of matters containing images of minors engaged in sexually explicit conduct in violation
13 of 18 U.S.C. § 2252(a)(4). Defendant is awaiting imposition of sentence. The adjusted
14 offense level recommended by the parties in the plea agreement is Level 21 which
15 would result in an advisory guideline range of 37-46 months. Pursuant to 18 U.S.C. §
16 3143 and Fed. R. Crim. P. 46(c), Defendant has the burden to show by clear and
17 convincing evidence that he is not likely to flee or pose a danger to the safety of any
18 other person or the community if released under 3142(b) or (c).

19 Defendant was required under the conditions of release to submit to
20 psychiatric/psychological counseling as specified by Pretrial Services. Defendant was
21 initially referred to individual and group sex offender counseling. Defendant was
22 terminated from counseling after the therapist determined that Defendant was not
23 suitable for therapy due to his admission to “habitually being untruthful to the
24 therapist.” (ECF No. 22 at 2). Defendant admitted to Pretrial Services that he was
25 untruthful with the therapist, accepted responsibility for his actions, and asked to be
26 referred to another counselor. Defendant was enrolled in sex offender treatment with
27 a therapist for a second time. Defendant attended several sessions with the second
28 therapist. Defendant made statements to the second therapist regarding fantasies which


1 lead the second therapist to recommend that Defendant be suspended from outpatient
2 psychotherapy until he can undergo a psychological evaluation. While Defendant did
3 not identify any targets to his fantasies and stated that he would never act on his
4 fantasies, the statements made by the Defendant support the conclusion that Defendant
5 poses a present danger to the community. Defendant's assurances to his therapist that
6 he would not act on his fantasies must be evaluated in light of Defendant's prior
7 admission that he was habitually untruthful with his first therapist.

8 **CONCLUSION**

9 At this stage in the proceedings, a psychological evaluation is necessary to
10 determine the Defendant's mental health function, and risk to any other person or to the
11 community. Based upon the record before this Court, the Court cannot find by clear
12 and convincing evidence that Defendant is not likely to pose a danger to the safety of
13 any other person or the community if released under the conditions previously imposed
14 or upon any other conditions set forth in 3142(b)(or (c). Detention is required under 18
15 U.S.C. §3143(a)(1).

16 IT IS HEREBY ORDERED that Defendant's bond (ECF No. 10) is revoked.
17 Defendant will remain in the custody pending sentencing.

18 DATED: December 3, 2013

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20 **WILLIAM Q. HAYES**
21 United States District Judge
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